

September 17, 2010

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

**Re: Notice of *Ex Parte* Presentation,  
ET Docket Nos. 04-186, 02-380;  
WT Docket Nos. 08-166, 08-167;  
GN Docket No. 09-157**

Dear Ms. Dortch:

On September 16, 2010, Benjamin Lennett of the New America Foundation, Andrew Jay Schwartzman and Jonathan Lane of Media Access Project, Rashmi Rangnath and Ernesto Falcon of Public Knowledge, and Stephen Coran representing the Wireless Internet Service Providers Association (“WISPA”) met with Commissioner Robert M. McDowell and his legal adviser Angela Giancarlo, with regard to the above captioned proceeding.

With regard to wireless microphones, the parties reviewed their previous concerns about the lack of balance between spectrum access for microphone users and providing sufficient the channel availability for white space devices. The combination of access to channels 14 – 20 where personal-portable white space devices are not permitted to operate, two exclusive channels, and possible access to the database by users of grandfathered Part 15 wireless microphones will deprive white space devices of access to precious channels in the most populous urban markets, potentially leaving few if any channels available and preventing manufacturers from creating devices for national markets. Moreover, the national expansion of two channels adjacent to channels 37 exclusively for use by wireless microphones would be an extremely inefficient use of the spectrum in suburban and rural areas, where the spectrum for the vast majority of the time is likely to go completely unused.

The parties proposed that Part 15 wireless microphones should be confined to the two available channels adjacent to Channel 37 on a *non-exclusive* basis, meaning that wireless microphones would be registered as Part 15 devices in the geolocation database on these channels for the specific event. Further, if the Commission decides to make additional spectrum available to for the exclusive use by Part 15 wireless microphone users, the parties suggest the following: (1) use of other channels should be upon application to the Commission (OET on delegated authority following public notice) and with a certification made under penalty of perjury, (2) there should be a meaningful application fee to cover the administrative costs, which would also serve to prevent unnecessary blocking of channels that could be used for other purposes, (3) the application must show that Channels 14-20 and the two non-exclusive channels are not available based on a

specific showing and reasonably efficient technical solutions, and the inability of existing microphone equipment will not be sufficient to meet this criterion, and (4) the application must be for specific channels on specific dates/times, not an open-ended application which will tie up spectrum capacity even after wireless microphone use ceases in the area.

The parties also reiterated their support for WISPA's proposal to increase the maximum permissible base station height, observing that it would significantly reduce the cost of rural deployment and could, for some providers in sparsely populated areas, make the difference between no deployment and sustainable deployment. Parties also restated their support for the Commission to put out a notice of inquiry examining the potential of variable power for white space devices.

With regard to whether the Commission should, as a matter of policy, should require a full vote of the Commission to grant certifications for sensing-only devices, the parties noted that the Commission must weigh the benefits of such a process against the cost of delay and the impact of creating a considerable dis-incentive for firms to invest in research and development of sensing technology that has applicability not just in this context but also for innovative spectrum access models that would allow the Commission to meet its spectrum goals as provided in the National Broadband Plan. The issues raised by NAB/MSTV, while important, are highly technical and precisely the sort of issues best dealt with by the FCC's expert engineering staff. In the event NAB/MSTV are dissatisfied with OET's resolution on a particular certification decision, parties would retain the right to seek reconsideration from the full Commission.

By contrast, requiring the full Commission to act on sensing-only equipment certifications would introduce yet more costly uncertainty into a lengthy process of testing that has stretched over 8 years since the Spectrum Policy Task Force first proposed this initiative. The dedication and resources expended by the companies eager to develop this technology has been unprecedented – and has limits. A decision to interject still more delay in the certification process, for no apparent reason, could have a devastating impact on the willingness of companies to develop and deploy this new technology as well as consumers waiting to receive the benefits of this technology. It delays the creation of manufacturing jobs, the deployment of rural broadband, and threatens to cede the development of this technology to other countries – such as the UK, China, India, and Brazil – which are also investigating the potential for sensing technology.

With regard to the procedural objections raised by MSTV/NAB concerning database inputs, the parties observed as an initial matter that the Commission had specified in the 2008 *Second Report and Order* that it would address matters pertaining to the database via Public Notice (§227). Even without this initial delegation of authority and notice to interested parties, OET issued a Public Notice and provided adequate opportunity for notice and comment. Resolution of the pending database administration questions by OET on delegated authority would not violate the Administrative Procedures Act (APA).

Moreover, the parties expressed serious concern about the potential requirement that white space devices check the database every 60 seconds versus the current requirement of every 24 hours. This seems unnecessary given the static nature of most registrants in the database, including wireless microphone users who plan events well in advance. Such a requirement would also severely limit battery life for personal portable white space devices, creating an additional and unnecessary technological hurdle for companies to bring these devices to market.

The parties lastly expressed support for the Commission to grant the Petition for Reconsideration of Tribal Digital Village on the issue of the border exclusion zone. Parties also proposed the Commission quickly put out for comment the applicability of the television border exclusion rules for white space devices.

In accordance with Section 1.1206(b), this letter is being filed with your office. If you have any further questions, please contact me at (202) 861-0020

Sincerely,

*/s/ Benjamin Lennett*

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Cc:

Commissioner Robert M. McDowell  
Angela Giancarlo